

# BOARD OF EXAMINERS MEETING

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January 28, 2020

## **1. A. Call to Order and Confirmation of Attendance**

Governor Steve Bullock, as President of the Board of Examiners (Board), called the meeting to order on January 28, 2020, at 9:03 a.m. in Room 250 of the State Capitol with Secretary of State Corey Stapleton, Attorney General Tim Fox in attendance.

Staff and advisors present were: John Lewis, Mark Bruno, Kendra Whitaker, Department of Administration; Tom Livers Office of Budget and Program Planning (OBPP); Christi Jacobsen, Secretary of State's Office (SOS); Anna Miller and Patricia Greiberis, Department of Natural Resources and Conservation (DNRC); Dan Semmens of Dorsey & Whitney LLP.

## **B. Approval of Minutes of Board of Examiners Meeting of October 8, 2019.**

**Motion and Vote:** Governor Bullock called for a motion to approve the minutes of the Board of Examiners meeting of October 8, 2019. Tim Fox so moved. The motion passed unanimously.

## **C. John Lewis, Director, Department of Administration: Overview of Agenda**

John Lewis briefly described the items on today's agenda.

Agenda items #2 and #3 are related to "Amendments to Indenture of Trust" for the State of Montana Drinking State Revolving Fund and "Amendments to Indenture of Trust" for the State of Montana Water Pollution Control State Revolving Fund. Anna Miller of Department of Natural Resources and Conservation (DNRC) will provide the presentation and Dan Semmens, the State's Bond Counsel with Dorsey and Whitney will discuss the needed Resolution.

Agenda items #4 and #5 are in regard to requesting issuance of up to \$3,200,000 Taxable General Obligation Bond Anticipation Notes to the Board of Investments for the "Drinking Water State Revolving Program". Anna will provide the presentation and Dan will discuss the Resolution required.

Agenda items #6 and #7 are in regard to requesting issuance of up to \$10,000,000 Taxable General Obligation Bond Anticipation Notes to the Board to Investments, for the "Water Pollution Control State Revolving Programs". Anna will provide the presentation and Dan will discuss the required Resolution.

Agenda items #8 and #9 are in regard to requesting issuance of up to \$1,000,000 Taxable General Obligation Renewal Resource Program Bond, Taxable Series 2020A for the "Non-Point Source Loan Number 22". Anna will provide the presentation and Dan will discuss the resolution.

Agenda items #10 and #11 are in regards to the "Coal Severance Tax Program" designating the Director of the Department of Natural Resources and Conservation to be the Authorized Officer, for purposes of making the determination under the general resolution, including but not limited

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to, determinations regarding the optional redemption of bonds. Anna will provide the presentation and Dan will discuss the resolution.

Then item #12 is "any other business before the board."

## **2. Department of Natural Resources and Conservation (Anna Miller): Amendments to Indentures of Trust. Presentation on behalf of the Department of Natural Resources and Conservation regarding amendments to the Indenture of Trust for the State of Montana Drinking Water State Revolving Fund and amendments to the Indenture of Trust for the State of Montana Water Pollution Control Revolving Fund.**

Anna Miller and Dan Semmens go into detail on why they believe reducing the reserve from one year's maximum payment on long term bonds to half a year is a much wiser use of funds. The following paragraphs go into more detail on this.

Anna reports that this resolution is to help make us more efficient and cost effective in drinking water and wastewater program operations. When these programs were started, (wastewater program 29 years ago and the drinking water program 22 years ago) even though these are general obligation bonds backed by the full faith and credit of the state of Montana, a reserve account was put in. For every long-term bond that was issued, we will put in a reserve of one-year maximum debt service. We would never harm the General Fund and have to go there should our borrowers not pay. We have very extensive data to demonstrate that no one has ever defaulted, and we've never missed a payment.

The first bond we issued in 1998 had a maturity date of 2018 of which we paid off in 2012. The 2000A bond for \$3 million had a maturity date of 2020 of which we paid off in 2010. What we're experiencing is as our borrowers are paying us off. We are in turn paying off debt. What we'd like to ask you to do for each program, is to use that money for construction as we have a huge construction season coming. We should reduce that loan loss reserve to just half of one year's maximum debt service. We think it's more efficient to use that money either to pay down more debt or to use it on future construction. That's what we're asking you to do with this first resolution in each program; allow us to reduce the reserve from one year's maximum payment on long term bonds to half a year. We'll still have protection, but we feel it's a much wiser use of funds, especially because if your checking accounts that are like these, they are not earning any interest.

Before questions, Dan addressed a couple things to add more clarity to Anna's point on why they believe that reducing the reserve from one year's maximum payment on long term bonds to half a year is a wiser use of funds.

In the trust and indentures, the Water Pollution Control (Wastewater from 1991 and the Drinking Water from 1998) has a loan loss reserve requirement. Initially as a new program, you're always concerned about the market of bonds and how the market going to accept the bonds, but this is on top of the bonds being General Obligation (GO) bonds. The full faith and credit taxing power of the state is pledged. A purchaser of the bond in an open market is going to look at this as a GO

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bond. It's unusual to have a reserve in a GO bond context, because of the pretty high threshold of obligation to pay from the General Fund or any available fund of the debt service on the bonds. However, because these were new programs, the loan loss reserve requirement was inserted in the trust in the definition of loan loss reserve requirement. In the disclosure documents pursuant to which underwriters purchase bonds and the bonds are sold on the public market, it was disclosed that the board can cause the loan loss reserve requirement to be reduced at any time. This is not an adverse effect for the purchasers of the bonds as they bought the bonds in contemplation of this potentially happening. They're also GO bonds, so I'm not sure how much they're looking at the loan loss reserve requirement in 2020, given the payment history.

The only bonds outstanding on the Wastewater side are 2015C. In the Drinking Water programs, the only bonds that are outstanding there are the 2010B. We don't think that the markets are going to react adversely to this. When we're making loans to borrowers, we changed the borrower's obligation with regard to the reserve. The City of Helena borrows for a wastewater treatment plant and their reserve is one half of maximum principal and interest. It puts them on even keel with the State pool level of bonds. There has never been a default at the borrower level. It seems like a bit much for the Board to go out in the market again with a sizable bond issue, as maximum principal and interest can be quite a bit. All it's doing is sitting there in a reserve, untouched for years. It seemed like a more efficient way to proceed with the program and the financing, as we don't think it will adversely affect the market at all.

Governor Bullock asked, "How much is in the reserves?"

Anna responds that currently we have \$2.6 million in the Wastewater program. Right now, we can reduce it to half. In the Drinking Water program, there is \$700,000 but because we're paying up bonds that will be reduced to \$100,000.

Attorney General Tim Fox asked, "How much is this going to free up?"

Anna answers that it should free up about \$1.5 million.

Attorney General Tim Fox asked if there is there any obligation for those outstanding purchasers to give them any notice of this change?

In summary, Dan answered that there could be a possibility to give notice of the change, which would happen if the material event meets mandatory disclosure requirements. They would send out a notice stating that the bonds will continue to be GO bonds. Dan answers in more detail over the next three paragraphs.

In the corporate private world, there is recent development in the municipal market called EMMA (EDGAR is the counterpart), which is a municipal bond data repository. Issuers of publicly sold outstanding bonds must do what's called continuing disclosure, and at least once a

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year post their financials and operating data, etc. If there's a material event or a material change, mandatory disclosure is a requirement. We don't think this rises to the level of mandatory disclosure, because the definition of loan loss reserve requirement said we can reduce and get rid of it by the Board's decision. However, there is the potential for this to happen, so then we would say the bonds will continue to be GO bonds.

Dan talked about the voluntary notice.

Provision 12.01 of the trust indentures says you can do the following things without bondholder consent; you can alter the funds, accounts, and the requirements of the funds and accounts so long as the bonds continued to be GO bonds. This particular item falls within 12.01. The only holders of bonds outstanding that will be affected are the holders of the series 2015C Wastewater bonds. Their outstanding and principal amount is of around \$21 million and the Original issue was \$24 million.

We're going to pay off the drinking water publicly sold bonds, so those will be the only series of bonds affected in terms of what's out in the market. In terms of future bond issues, we think it will make it a lot more efficient, and it won't adversely affect the credit rating.

Secretary of State Cory Stapleton asks if this reduction applied to all outstanding ones or just some specific ones?

Dan answers that it will only effect all publicly sold and long-term Wastewater and Drinking Water bonds.

Secretary of State Cory Stapleton asked how long is this current procedure been in force for the one year reserved

Anna answered that for the wastewater program since 1991, and for the drinking water program since 1998. That was when they were originally started.

Secretary of State Cory Stapleton asked if this action has anything to do with what's going on with the Legislative Audit skirmish (Medicaid & Infrastructure Bonding)?"

Dan answered that this program has nothing to do with anything going on with the Legislative Audit Division (LAD).

Anna explains further that this particular item is just a change to the operating procedure. We're not selling any bonds on this agenda.

Anna explained that Moody's and S&P does a yearly review of the state of Montana's credit, even if we aren't selling any bonds. Nothing has changed over the last four or five years with the State's credit review.

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Dan stated that we haven't reached out to the rating agencies. They would look at this as a GO bond. When this program was set up, there were many states that did them as Revenue bonds. There was a decision made back in the 1990s to have them done as GO bonds in Montana program to get the best possible credit rating, so that we can pass those savings on to borrowers like, local governments, etc. When the DNRC makes wastewater loans, or drinking water loans to municipalities, the rating agency would be looking at the credit of these bonds, based on the credit of the state as a whole, not the internal machinations of each program.

One concern there might be is the loan loss reserve account is a buffer between the program and the General Fund. If things are not going well with the program, you will have to resort to that loan loss reserve account to satisfy any deficiency in repayments from borrowers, so that you could repay the general obligation bond.

There has never been a default, and we're confident a rating agency would look at these as GO bonds because that's how they've always looked at them. What happens with this loan loss reserve requirement within the program won't be very material to the credit agency looking at the credit of the State.

There was further discussion by the Board members about credit ratings and disclosure.

Governor asked whether the legislature could take the reserves anyway?

Dan answered no and went into more details. In terms of the materiality, he was speaking from a securities disclosure level. If the loan loss reserve requirement didn't say that it can be reduced from time to time by the Board, then I don't know that we could ever entertain doing this. It would be material, otherwise.

Governor added that the difference between having a 12 month or 6 month reserve - and this additional capital we could use to do water and sewer projects.

Anna mentions that every six months we collect our payments from our borrowers. What's happened in the last number of years is every six months we have that required maximum amount in the reserves. We charge a loan loss reserve to people, it sits in that account, and then we sweep it out, because we've already hit our maximum requirement. If there were a problem in the next six months payment. We could put more money in the reserve.

Dan adds that it is a good point and that the loan loss reserve is funded by borrowers. Currently, the interest rate is 2.5% all in, and it's 2% simple interest revolving to make other loans. However, 0.25% is this loan loss reserve. When the borrowers are repaying their loans, 0.25% each time is going to fill this reserve.

Secretary of State Cory Stapleton asked this change could apply to a much larger bond portfolio?

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Anna answer yes it could. We're going to issue \$10 million, then puts another long-term bond in the place and then we will take care of it in the six months and putting money in the reserve.

Secretary of State Stapleton wanted staff to notify the Board if any of the action would effect the any credit rating. Staff agreed to.

The main factor would free up the \$1.5 million. It wouldn't apply to future bonds, like the \$10 million issue that's being proposed. That wouldn't be a drain on that bond issue to fund to the maximum annual principal and interest, because that's funded by the borrower's repayments.

**3. Dorsey & Whitney LLP (Dan Semmens): Resolution of the Board of Examiners of the State of Montana Relating to the Sate's Drinking Water State Revolving Fund Program and the State's Water Pollution Control State Revolving Fund Program; Approving Supplemental Indentures of Trust Amending the Respective Program's Indenture of Trust and Authorizing the Execution of Supplemental Indentures (the "Amending Resolution)**

**Motion and Vote:** Governor Bullock called for public comment. Hearing none, he then called for a motion to adopt the initial authorizing resolution. Attorney General Tim Fox so moved. The motion passed unanimously.

**4. Department of Natural Resources and Conservation (Anna Miller): Drinking Water State Revolving Fund Program: Presentation regarding Drinking Water State Revolving Fund Program, requesting Issuance of up to \$3,200,000 Taxable General Obligation Bond Anticipation Notes (Drinking Water State Revolving Fund Program) to the Board of Investments.**

Anna explained that this resolution for the Drinking Water Revolving Fund Program is to approve \$3.2 million in taxable bonds to match our 2019 EPA grant. The list of borrowers are; Basin Water and Sewer District, Bigfork County Water and Sewer District, Town of Cascade, Clancy Water and Sewer District, City of Deer Lodge, the Dry Prairie Rural Water Authority, Lockwood Water and Sewer District (Lockwood is a bedroom community of the City of Billings), and the City of Sidney. This will match federal funds to put these loans in place for these communities.

Anna also included a picture in Tab 4 that looks at the City of Great Falls water treatment plant, that was approved by the Board two years prior to match the EPA grant's funds. The City of Great Falls borrowed \$28 million to build this water treatment plan. This plant won a national award for its design and operations. Anna mentions that they also have made \$384 million worth of loans, since the beginning of the program 454 actual individual loans. Over the summer we will have 44 drinking water projects up in construction.

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**5. Dorsey & Whitney LLP (Dan Semmens): Drinking Water State Revolving Fund Program: Resolution of the Board of Examiners of the State of Montana Relating to the State's Drinking Water State Revolving Fund Program, Approving a Supplemental Indenture of Trust Providing for the Issuance of State of Montana General Obligation Bond Anticipation Notes, Authorizing the Issuance and Sale and Establishing the Terms and Conditions of Up to \$3,200,000 Taxable General Obligation Bond Anticipation Notes (Drinking Water State Revolving Fund Program), and Authorizing the Execution of the Supplemental Indenture and Relate Documents (the "Drinking Water Note Resolution").**

This is a loan to help fund the Drinking Water State Revolving Fund Program. It's from the Board of Investments INTERCAP program, and it's a short-term note that would need to be paid off within three years.

The Governor asked for clarity on the Secretary's question earlier about taxable versus nontaxable and referenced October's meeting where they had an initial resolution for \$33 million.

Tom Liver, the Budget Director, explained further about the Secretary's question, that maybe the distinction between what's currently going on with LAD and the action here.

He said that these items are taxable bond issuances, anticipation notes, and privately placed with the Board of Investments and do not need legislative audit review.

What the LAD impasse deals with is HB 652, which are the infrastructure projects and we're working through the impasse right now.

Nothing in today's meeting is subject to LAD review. We're not held up from going out and approving these actions now. It is not going out to the market; it doesn't require the financial statements. It doesn't have quite the same level of disclosure required legally as public issuance. It has to do with the timing of the CAFR. The State has got its draft CAFR that's been reviewed by the LAD.

Tom went into further detail on how they believe they will be able to move forward on these Bonds in March rather than November and not miss the construction season on HB 652 projects.

There will be sufficient disclosure from their opinion that we will be able to go out with issuance on those other projects. At this point, it looks like March, then we'll be able to move on Bond issuance.

Our thoughts at the time were that we didn't want to sell bonds and start incurring significant debt interest until we really need the larger amount heading into the construction season.

We intended to do that in November, but the fact that the State is currently in a healthy financial state, has allowed us to continue to work on that reimbursement basis with internal loans, and

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still keep the projects moving to avoid the risk of missing construction season. But, given the facts we anticipate selling GO bonds in the market in March. We're able to float those now. Currently, it's been about \$250,000 in design and preparation costs for all those projects. However, as we move into construction season we will start significantly spending. We've kept the projects moving and resolving the impasse with the LAD. We will be able to go out for a bond sale in March.

Anna added that the EPA, who gives us our money, requires that we produce financial statements and have an audit every year on the Drinking Water and Wastewater program. Despite Montana being a very small and rural state, a recent review by the EPA has nationally recognized Montana. Montana was in the top five states nationally in terms of getting money out to communities.

Dan mentions that one of the primary differences between what is before the Board today and the bonds that would fund the infrastructure program (HB 652) that the legislature authorized, is the later bonds would be sold publicly through an underwriter. A reason to do that when you have that size of a bond issue is to take advantage of the interest rate savings. It's a public security and it's exempt from the Securities and Exchange Act, but it's not exempt from the 10b 5 Anti-Fraud and other provisions. You need to have a well thought out, complete, and thorough disclosure documents. That's the issue that the LAD matter raises; going out to the market and how do you disclose. Here today we aren't going out into the market. We're just going across the street and saying the Drinking Water program needs us. INTERCAP is "painfully familiar" with the program. They know how it works, so we don't face the disclosure issue that's arisen in connection with the LAD and the HB652 project bonds.

**Motion and Vote:** Governor Bullock called for public comment. Hearing none, he then called for a motion to adopt the initial authorizing resolution. Secretary of State Corey Stapleton so moved. The motion passed unanimously.

**6. Department of Natural Resources and Conservation (Anna Miller): Water Pollution Control State Revolving Fund Program: Presentation regarding Water pollution Control State Revolving Fund Program, requesting issuance of up to \$10,000,000 State of Montana Taxable General Obligation Bonds (Water Pollution Control State Revolving Fund Program) to the Board of Investments.**

Anna states that this resolution is asking for is to approve up to \$10 million in bonds for the Wastewater program. We will sell to our issue to the Board of Investments to match our 2019 EPA grant. We have a huge construction program plan for this year, and we've got many older wastewater treatment plants around the state that are experiencing some capacity issues. The list of borrowers is; City of Belgrade, Bozeman and Bozeman's doing a very large collection system line. They've got lines going west to the new high school and lines going east to the new clinic that's going in. The City of Plentywood (they're just doing some rehab on their system), City of



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Thompson Falls (lot of work on unsewered areas where septic tanks are failing), Ryegate, and the City of Whitefish (very large wastewater treatment plant).

Anna handed out a picture of a project that the Board approved which showed City of Cut Bank's completed wastewater treatment plant. Cut Bank received a State of Montana acknowledgement from the engineers in the State of Montana. Cut Bank is not a wealthy community and they spent \$14 million. Cut Bank got a few grants – one being a Renewable Resource grant, and they had Treasure State Endowment Program funding.

Anna added that they've done \$654 million worth of loans from the inception of the program and will have 54 projects under construction this summer.

Dan chimed in and said that it may be evident from these numbers that wastewater treatment systems are increasingly more and more expensive, and it may become a legitimate policy concern.

**7. Dorsey & Whitney LLP (Dan Semmens): Water Pollution Control State Revolving Fund Program: Resolution of the Board of Examiners of the State of Montana Relating to the State's Water Pollution Control State Revolving Fund Program, Approving a Supplemental Indenture of Trust providing for the Issuance of Up to \$10,000,000 State of Montana Taxable General Obligation Bonds (Water Pollution Control State Revolving Fund Program), and Authorizing the Execution of the Supplemental Indenture and Related Documents (the "Water pollution Control Bond Resolution").**

The Board of Investments would purchase these long-term bonds for up to 10 years for \$10 million. They have the benefit of certain provisions that you can do in a private placement that you can't do in a public placement. One of the biggest ones, is they're subject to redemption at any time without penalty. As Anna gets money in from the cash flow from the borrower, she can pay them down. She is very good at keeping track of the receipt of the funds and setting aside amounts to pay down bonds as quickly as possible. Dan then read the resolution out loud.

**Motion and Vote:** Governor Bullock called for public comment. Hearing none, he then called for a motion to adopt the initial authorizing resolution. Attorney General Tim Fox so moved. The motion passed unanimously.

**8. Department of Natural Resources and Conservation (Anna Miller): Non-Point Source Renewable Resource Bond: Presentation regarding Renewal Resource Loan Program (Private Loan Program), requesting issuance of up to \$1,000,000 General Obligation Renewable Resource Program Bond, Taxable Series 2020A (Non-Point Source Loan No. 22)**

DNRC is asking for \$1 million to make loans to ranchers and farmers to improve their irrigation systems (fixing leaky pipes and installing more efficient pumps, etc.). Currently, Anna said we've got \$500,000 obligated in loans, and a few more people have sent in applications to us. We may have another million Bond request before the Board at the next meeting.

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The million dollars are for those Non-point source projects. They borrow the money from the revolving fund program that we have. These are also green projects that EPA appreciates, because again it's keeping rivers and streams, more protected from fertilizers and items like that.

**9. Dorsey & Whitney LLP (Dan Semmens): Non-Point Source Renewable Resource Bond Resolution: Resolution Relating to the \$1,000,000 State of Montana General Obligation Renewable Resource Program Bond, Taxable Series 2020A (Non-Point Source Loan No. 22); Authorizing the Issuance Thereof to the State of Montana Water Pollution Control State Revolving Fund Program, Establishing the Terms and Conditions Thereof and Approving and Authorizing the Execution of Documents Pertaining Thereof (the "Series 2020A Bond Resolution")**

The borrowing authority that the DNRC has with the SRF program must be taxable bonds, because there's private use by its farmers and ranchers. As a result of it being through the SRF program, the interest rate on these is 2.5%. This enables the DNRC to make lower interest rate loans to the farmers and ranchers for these renewable resource projects. Dan read the resolution out loud.

**Motion and Vote:** Governor Bullock called for public comment. Hearing none, he then called for a motion to adopt the initial authorizing resolution. Secretary of State Corey Stapleton so moved. The motion passed unanimously.

**10. Department of Natural Resources and Conservation (Anna Miller): Coal Severance Tax Program. Presentation regarding designating Director of the Department of Natural Resources and Conservation as an Authorized Officer for the purposes of making determinations under the General Resolution, including but not limited to, determinations regarding the optional redemption of Bonds.**

This resolution would make the Director of the Department of Natural Resources and Conservation an Authorized Officer, which would give that position some approving powers. The definition of Authorized Officer is the Governor, Secretary of State, Attorney General, and Executive Secretary of the Board, plus any officer of the state that the Board designates as an Authorized Officer. The powers of Authorized Officers are quite limited. The only thing that comes up in terms of just implementing the program is calling and redeeming bonds. There was an instance recently where we didn't want to bother the Board and so we thought we should maybe just extend this to the Director of the DNRC.

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**11. Dorsey & Whitney LLP (Dan Semmens): Coal Severance Tax Resolution. Resolution of the Board of Examiners of the State of Montana Relating to the State's Coal Severance Tax General Resolution; Designating Additional Authorized Officer with Respect Thereof (the "Authorized Officer Resolution")**

Dan further discussed the need for the resolution, including the definition of an additional Authorized Officer. He added that an additional Authorized Officer duty are quite limited, and it comes up within the context of redeeming bonds. The Director of DNRC is well positioned to understand this.

He read the resolution.

**Motion and Vote:** Governor Bullock called for public comment. Hearing none, he then called for a motion to adopt the initial authorizing resolution. Attorney General Tim Fox so moved. The motion passed unanimously.

**12. Governor: Other Business:**

The Governor asked about any other business before the board.

Anna Miller said the board has minutes and resolutions that would need to be signed.

There was no other business. The meeting adjourned at 10:05 a.m.

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**Governor Steve Bullock**  
President of the Board

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**Secretary of State Corey Stapleton**  
Member of the Board

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**Attorney General Tim Fox**  
Member of the Board

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**John Lewis**  
Executive Secretary